

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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THOMAS HANCOCK, SR., et al.,

Plaintiffs

-against-

COUNTY OF SUFFOLK, ET AL.,

Defendants
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ORDER

Civil Action No. 06-1716
(DRH)(ETB)

HURLEY, Senior District Judge:

Presently before the Court is a Report and Recommendation of Magistrate Judge E. Thomas Boyle, dated November 1, 2007, recommending that this action be dismissed pursuant to Federal Rules of Civil Procedure 16(e) and 41(b). A copy of the Report and Recommendation was served upon on the Defendants on November 2, 2007. No objections have been filed.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result.

Rule 41(b) authorizes a court to “dismiss a complaint for failure to comply with a court order, treating the non compliance as a failure to prosecute.” *Simmons v. Abruzzo*, 49 F.3d 83, 97 (2d Cir. 1995). *See also Wynder v. McMahon*, 360 F.3d 73, 79 (2d Cir. 2004) (Rule 41(b) is a “useful tool of judicial administration available to district courts in managing their specific cases and general caseload.”). Such a dismissal is committed to the sound discretion of the court. *Merker v. Rice*, 649 F.2d 171, 173-74 (2d Cir. 1981). A court must consider the following factors when contemplating a Rule 41(b) dismissal: (1) the duration of noncompliance; (2) whether the plaintiff had notice of the potential for dismissal; (3) the potential prejudice to the

defendant; (4) the efficacy of a lesser sanction; (5) a weighing of the court's interest in managing its docket against the party's interest in receiving the opportunity to be heard. *See Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 63 (2d Cir. 2000). Judge Boyle's Report and Recommendation evidences that consideration of these factors makes dismissal appropriate. Accordingly, this Court adopts the November 1, 2007 Report and Recommendation of Judge Boyle as if set forth herein. This action is dismissed with prejudice. The Clerk of Court is directed to serve a copy of this Order on the Plaintiffs and to close this case.

SO ORDERED.

Dated: Central Islip, N.Y.
November 20, 2007

/s/

Denis R. Hurley,
United States District Judge